



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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(603) 271-3503 FAX (603) 271-2867



Robert A. Bourgeois Revocable Trust
Robert A. Bourgeois, Trustee
519 Edgewater Drive
Gilford, NH 03246

NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 02-012

March 7, 2002

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to the Robert A Bourgeois Revocable Trust, pursuant to RSA 482-A and Env-C 614, et seq. The Division is proposing that fines totaling \$2,000 be imposed against the Robert A. Bourgeois Revocable Trust for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. The Robert A. Bourgeois Revocable Trust is a revocable trust having a mailing address of 518 Edgewater Drive, Gilford, NH 03246.

III. Summary of Facts and Law Supporting Claims

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. Robert A. Bourgeois Revocable Trust ("the Trust") is the owner of property located on Governor's Island in Gilford, NH, more particularly described in Town of Gilford tax maps as Map 217, Lot 64 ("the Property").
4. On June 25, 2001, Division personnel inspected the Property. The purpose of the inspection was to determine compliance with the terms of Permit #2000-1396, issued to the Robert A. Bourgeois Revocable Trust on October 10, 2000. That permit authorized the dredging of 6.5

cubic yards of material within a 360 square foot area within the landwardmost slip of a four-slip "F" shaped docking structure on the Property.

5. The inspection revealed two unpermitted pilings placed in Lake Winnepesaukee extending from the permitted docking structure and installation of two unpermitted boatlifts on the shoreline of the Property.

6. On October 15, 1999, DES issued a Notice of Proposed Fine and Hearing to Robert Brown for work performed on property owned by Robert Bourgeois on Governor's Island in Gilford, NH. The fine was sought for work done for Mr. Bourgeois that resulted in rocks deposited in Lake Winnepesaukee and turbidity in the water.

IV. Violations Alleged and Proposed Administrative Fines

1. Robert A. Bourgeois has violated RSA 482-A:3, I and RSA 482-A:14, III by installing two pilings and two boatlifts on the Property without a permit from DES. For this violation, Env-C 614.05(d) specifies a fine of \$2,000.

The total fine being sought is \$2,000.

V. Required Response, Opportunity for Hearing

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than April 10, 2002 using the enclosed colored form.

1. If the Trust would like to have a hearing, please sign the appearance section of the colored form and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form. A Notice of Scheduled Hearing will be issued.

2. If the Trust chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If the Trust wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate the Trust's interest in settling.

The Trust is not required to be represented by an attorney. If the Trust chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that the Trust committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than**

not that the thing sought to be proved is true.

If the Division proves that the Trust committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that the Trust proves, by a preponderance of the evidence, applies in this case:**

- The violation was a one-time or non-continuing violation, **and** the Trust did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** the Trust did not benefit financially, whether directly or indirectly, from the violation.
- 2 At the time the violation was committed, the Trust was making a good faith effort to comply with the requirement that was violated.
 - 3 The Trust has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
 - 4 Other information exists which is favorable to the Trust's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that the Trust committed the violation(s) alleged above and that the fine(s) should be imposed. The hearing is the Trust's opportunity to present testimony and evidence that the Trust did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced. If the Trust has any evidence, such as photographs, business records or other documents, that the Trust believes show that the Trust did not commit the violation(s) or that otherwise support the Trust's position, the Trust should bring the evidence to the hearing. the Trust may also bring witnesses (other people) to the hearing to testify on the Trust's behalf.

If the Trust wishes to have an informal meeting to discuss the issues, the Trust must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If the Trust has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.



COPY

Harry T. Stewart, P.E., Director
Water Division

Enclosure (*NHDES Fact Sheet #CO-2000*)

cc: Gretchen Rule, DES Legal Unit
Susan Alexant, DES Rules & Hearings Attorney
Marjory Swope, NHACC
Jennifer Patterson, DOJ/EPB
Gilford Conservation Commission
Gilford Board of Selectmen